



SENATOR JANET BEWLEY
WISCONSIN STATE SENATE

November 25, 2015

Chair Janell Knutson & members
Unemployment Insurance Advisory Council
201 East Washington Avenue
P.O. Box 8942
Madison, WI 53708

Dear Chair Knutson & Members,

Locally-owned businesses, tourist destinations, construction and seasonal employers across Wisconsin have long been able to rely on retaining experienced and talented workers thanks to the way our UI System was administered. I have started hearing from local business owners who are worried about losing quality employees because of a change requiring their laid-off workers to seek and accept other work after just 8 weeks. I am writing to ask the Council to include a provision in the upcoming agreed-upon bill that would address the negative impact of these recent changes on small businesses across the state and especially in rural Wisconsin.

As you know, administrative rule changes adopted by DWD this summer cut the amount of time that an employee who will be rehired can claim unemployment without engaging in what is, too often, a fruitless search for work. Employers paying into UI now face the prospect of losing trusted employees and their experience after just 8 weeks, with a possible extension to only 12 weeks.

I am including a copy of legislation drafted in response to calls from Northern employers. LRB 3849 would allow an employer planning to rehire an employee to keep that worker from having to seek other employment up to 26 weeks. Current law allows DWD to make a determination of an employee likely to be rehired. This approach would not change that. It would recognize long-standing practice in Wisconsin communities. It would recognize that winters impacting seasonal work in Wisconsin last far more than 12 weeks. It would allow businesses that are vital to communities across the state to keep quality workers.

I respect the expert input of the Council in addressing this issue and offer this proposal as a possible starting point. I would welcome the opportunity to discuss this with you or any member of the Council and thank you for your time and attention.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet", written over a large, stylized flourish.

Janet Bewley
State Senator
25th District



25th Senate District

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3849/1
AJM:amn

2015 BILL

1 **AN ACT to amend** 108.04 (2) (a) 3. (intro.) of the statutes; **relating to:** an
2 exemption from work search requirements for certain individuals claiming
3 unemployment insurance benefits.

Analysis by the Legislative Reference Bureau

This bill provides that a claimant for unemployment insurance benefits who reasonably expects to be reemployed by the claimant's former employer within 26 weeks is exempt from the eligibility requirement of conducting weekly searches for suitable work.

Under current law, a claimant is generally required to conduct searches for work each week to be eligible for unemployment benefits. Current law provides that a claimant who is laid off is exempt from the work search requirement if the claimant reasonably expects to be reemployed by the former employer and the Department of Workforce Development (DWD) verifies that expectation. DWD may grant a claimant a waiver of the work search requirement under certain conditions. Administrative rules promulgated by DWD require DWD to grant a claimant a waiver of the work search requirement for eight weeks if the claimant reasonably expects to be reemployed with the claimant's employer within that period. The rules permit DWD to provide an additional four-week extension of that waiver. The rules also provide additional reasons a claimant may qualify for a waiver.

This bill modifies current law to specifically provide that a claimant is exempt from the work search requirement for up to 26 weeks after the week the claimant was laid off if the claimant reasonably expects to be reemployed within that 26-week period.

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 108.04 (2) (a) 3. (intro.) of the statutes is amended to read:

2 108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for
3 suitable work during that week, unless the search requirement is waived under par.
4 (b) or s. 108.062 (10m). The search for suitable work must include at least 4 actions
5 per week that constitute a reasonable search as prescribed by rule of the department.
6 In addition, the department may, by rule, require an individual to take more than
7 4 reasonable work search actions in any week. The department shall require a
8 uniform number of reasonable work search actions for similar types of claimants.
9 ~~This subdivision does not apply to an individual if~~ If the department determines that
10 ~~the~~ an individual is currently laid off from employment with an employer but there
11 is a reasonable expectation of reemployment of the individual by that employer
12 within 26 weeks after the week the individual was laid off, this subdivision does not
13 apply to that individual with respect to that 26-week period. In determining
14 whether the individual has a reasonable expectation of reemployment by an
15 employer, the department shall request the employer to verify the individual's
16 employment status and shall also consider other factors, including:

17 **SECTION 2. Initial applicability.**

18 (1) This act first applies to weeks of unemployment beginning on the effective
19 date of this subsection.

20 **SECTION 3. Effective date.**

To: Unemployment Insurance Advisory Council
From: Andy Rubsam
Cc: Janell Knutson
Date: December 17, 2015
Re: Proposal to increase work search waiver to 26 weeks for certain claimants (LRB-3849/1)

Federal law requires unemployment insurance benefit claimants to search for work in order to remain eligible for benefits.¹ The federal guidance regarding the work search requirement is that states have some discretion to define work search requirements, including provisions waiving the work search requirement for claimants who are on a temporary layoff with a definite recall date to their same employer.²

Wisconsin law states that unemployment claimants must conduct “a reasonable search for suitable work” in each week they claim benefits, which “must include at least 4 actions per week.”³ The work search requirement does not apply to claimants who are “currently laid off from employment with an employer but there is a reasonable expectation of reemployment by an employer.”⁴ The department considers the employer’s history of layoffs and reemployments, the anticipated reemployment date and whether the claimant has recall rights under a collective bargaining agreement.⁵

¹ 42 USC § 503(a)(12) (“a claimant must be...actively seeking work.”). Federal law provides a few exceptions to this requirement, such as if the claimant participates in approved training. 26 USC § 3304(a)(8).

² *Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012*, Unemployment Insurance Program Letter 05-13, page 3 (US-DOL, January 10, 2013).

³ Wis. Stat. § 108.04(2)(a)3.

⁴ *Id.*

⁵ Wis. Stat. § 108.04(2)(a)3.a. to c.

Before 2004, Wisconsin law provided a maximum work search waiver of 12 weeks for claimants that qualified for a waiver. Under the law in effect until June 14, 2015, the department, by administrative rule, waived a claimant's work search requirement if certain circumstances applied. If the claimant was laid off but there was a "reasonable expectation of reemployment of the claimant by that employer," the work search requirement was waived.⁶

As of June 14, 2015, Wisconsin law provides for a work search waiver if the claimant "is currently laid off from employment with an employer but there is a reasonable expectation that the claimant will be returning to employment within a period of 8 weeks, which may be extended an additional 4 weeks but may not exceed a total of 12 weeks."⁷

Wisconsin State Senator Janet Bewley proposes that the Council consider a proposal to amend the work search statute to provide for a 26-week work search waiver period for claimants who have a reasonable expectation of reemployment with the same employer. This proposal would, in effect, cause Wisconsin law to revert to the law of pre-June 14, 2015 administrative rule, which did not set a limit of weeks for work search waivers for claimants who have a reasonable expectation of reemployment with the same employer.

The Department anticipates that this proposal will have a negative effect on the Trust Fund because it will take longer for claimants to return to work, resulting in more benefits paid and less UI taxes paid to the Trust Fund.

⁶ Wis. Admin. Code § DWD 127.02(2) (before June 14, 2015).

⁷ Wis. Admin. Code § DWD 127.02(2) (effective June 14, 2015).